

## CHAPTER 1 - GENERAL PROVISIONS

1-1. Purpose. This pamphlet is designed to provide basic guidelines for all Corps employees tasked with the administration of Service Contract Act responsibilities. Its primary aim is to effect a uniform and consistent program of administration of labor standards responsibilities throughout the Corps. With the exception of very complex and unusual problems, this pamphlet attempts to provide answers to questions that most generally arise in connection with service contract labor standards. Official acquisition policy is found in the Federal Acquisition Regulation, and its supplements. If there is any conflict between the FAR system requirements and this pamphlet, the current FAR system rules apply.

1-2. Applicability. This pamphlet is applicable to all USACE commands and HQUSACE elements under the jurisdiction of the Commander, USACE.

1-3. Distribution. Approved for public release; distribution is unlimited.

1-4. References.

- a. McNamara-O'Hara Service Contract Act of 1965, as amended (41 USC 351, et. seq.)
- b. Brooks Act, as amended (40 USC 541, et. seq.)
- c. Brooks Act, as amended (40 USC 759)
- d. The Bankruptcy Reform Act of 1978 (11 USC 1 et. seq.)
- e. The Office of Federal Procurement Policy Act, as amended (41 USC 401 et. seq.)
- f. The Communications Act of 1934, as amended (47 USC 151 et. seq.)
- g. The Water Resources Development Act of 1976, as amended (42 USC 1962d-5d)
- h. Code of Federal Regulations, Title 29, Parts 4 and 541
- i. Code of Federal Regulations, Title 41, Chapter 201

- j. Federal Acquisition Regulation, Subpart 22.10, 52.222
- k. Defense Federal Acquisition Regulation Supplement, Part 222
- l. Army Regulation 215-7
- m. Opinions of the Attorney General, Vol. 38, Page 412
- n. Comptroller General Decision Numbers A-90983, B-109257, B-221203, and B-227036
- o. Department of Labor All Agency Memoranda Nos. 149, 153, 159, 166, and 188
- p. Department of Labor Opinion Letter 512

1-5 Policy. The development and maintenance of good relations between management, labor, and the Corps of Engineers are essential to the efficient and expeditious conduct of the Corps service contract mission. Accomplishment of this objective requires a continuous effort on the part of all members<sup>1</sup> assigned to service contract activities. The proper administration of these requirements must be given the same consideration as all other requirements of the contract and specifications.

1-6. Background.

a. The administration of statutory labor standards within the Corps of Engineers contracts is governed by the basic labor policy of the Department of Defense in Part 22 of the Federal Acquisition Regulation (FAR). This program has been further implemented by Part 222 of the Defense Federal Acquisition Regulation Supplement (DFARS) and various circulars and regulations issued by the Commander, USACE. Additionally, the Secretary of Labor has issued regulations implementing the labor statutes which are published in Title 29, Subpart A, Code of Federal Regulations.

b. The various labor standards statutes were enacted by Congress to prevent exploitation of labor on government contracts. Enacted in 1965, the McNamara-O'Hara Service Contract Act was the

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<sup>1</sup>Whenever, the word 'man', 'men', or their related pronouns appear, either as words or as parts of words (other than when referring to a specific individual), they have been used for literary purposes and are meant in their generic sense to include both female and male sexes.

culmination of an effort to extend the same protections enjoyed by contractor employees performing under Federal construction and supply contracts who are covered by the Davis-Bacon and Walsh-Healey Acts, respectively. Common to each of these labor standards statutes is a recognition of the consequences of certain procurement regulations. Due to the procurement requirement that the government award contracts to the lowest bid of any responsible bidder, low bidding can result in downward wage pressure. These pressures are particularly acute under service contracts which are more labor intensive than either construction or supply contracts. An examination of the legislative history of the Service Contract Act discloses a congressional intent to relieve the pressures to depress wages in the competition for Government service contracts. Further, it was deemed essential as a matter of public policy to afford such protection to service workers who are primarily low-paid, low-skilled, least likely to be organized, and thus most likely to benefit from the establishment of a "floor" below which wages should not fall.

c. Many labor relations problems involve interpretation of law, and for this reason, questions will arise in the field that are not covered in this pamphlet. Such problems should be brought to the immediate attention of the District Counsel and the District Labor Advisor or Contractor Industrial Relations Specialist (CIRS).

#### 1-7. Responsibilities.

a. Contracting Officer (CO). The administration of labor standards provisions is the responsibility of the CO and adequate means of assuring compliance are provided by the contract and regulations of the Secretary of Labor. The CO may assign specific duties as he deems appropriate for program objectives. The COs staff shall be responsible for:

(1) The timely submission of a Notice of Intention to Make a Service Contract, Standard Forms 98/98a to the Administrator, Wage and Hour Division of the Employment Standards Administration, Department of Labor for each covered service contract.

(2) The incorporation of the appropriate wage determinations and contract clauses in corresponding Invitation-For-Bid (IFB) and Requests-For-Proposal (RFP). These clauses are set forth at FAR 52.222.

(3) The review and evaluation of all contractor requests for authorization of additional classification and rate when such classifications are not provided in the applicable contract wage determination and the

subsequent submission of such actions to the Administrator, Wage and Hour Division.

(4) The prompt notification to the DOL of any SCA violation or receipt of SCA complaints alleging non-compliance with the Act.

(5) The expeditious compliance with all DOL requests for withholding of contract payments to cover back wages resulting from non-compliance with the Act.

b. District Labor Advisor. The District Labor Advisor or CIRS is responsible for the administration of all labor standards programs within the district. The CIRS advises, assists, and instructs USACE personnel on labor standards matters during all phases of the service contract mission. Based on public expectations, statutory obligations, regulatory requirements, and organizational demands, the CIRS are essential to the success of the district's mission. In other words, the CIRS is responsible for "preventive industrial relations." That is, through pro-active measures, the CIRS seeks to prevent contractor non-compliance as well as disruption of the overall district mission. The Labor Advisor also serves as the point of contact for any DOL-initiated investigations. The Labor Advisor will maintain a liaison with the appropriate DOL representatives and apprise USACE personnel of the status and findings of these investigations.

c. Contractors. The contract labor standards provisions apply to all contractors and subcontractors regardless of their employment policies. The contractor is responsible for: procurement, supervision, and management of all labor required for the completion of the work; compliance with Federal labor standards applicable to his contract and regulations pertaining thereto; and subcontractors' compliance with the contract labor standards provisions.